

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 184 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

RANJIT CONSTRUCTION CO.

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Appearance:

MR MANISH R BHATT for Petitioner  
SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 06/03/98

ORAL JUDGMENT

Per: R.K.Abichandani, J.

The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act, 1961"):

"Whether, the assessee was entitled to the claim for investment allowance u/s.32A of the I.T.Act, 1961 on the machinery engaged in the construction of bridges?"

2. In its Return for the previous year 1979-80, the assessee who carried on the business of building contractor claimed investment allowance on new machinery which was used for its business. The I.T.O. rejected the claim on the ground that the assessee was engaged in contract business and was not entitled to the claim. The C.I.T.(Appeals) however accepted the claim of the assessee on the ground that the machinery in question was employed in the construction of purchase and that it was not utilized for the manufacture or production of any article or thing specified in the XIth Schedule. He therefore directed the I.T.O. to allow the necessary deduction. The Revenue approached the Tribunal and the Tribunal, following its earlier decision, confirmed the order of the C.I.T. (Appeals).

3. In C.I.T. v. N.C.Buddharaja & Co., reported in 204 I.T.R. 412, the Hon'ble Supreme Court, while considering the question as to whether the assessee was entitled to investment allowance on the actual cost of the machinery and plant installed for the purpose of its business pertaining to construction of dams and canals under Section 32A of the said Act, in terms held that sub clause (iii) of clause (b) of sub-section (2) of Section 32A of the Act does not comprehend within its ambit, construction of a dam, a bridge, a building, a road, a canal and other similar constructions. In view of this decision of the Hon'ble Supreme Court, we hold that the assessee was not entitled to claim investment allowance under Section 32A of the Act, 1961 on the machinery engaged in the construction of bridges. The question is therefore answered in the negative in favour of the Revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani, J.)

(Kundan Singh, J.)

(sunil)